DUANE M. GECK (State Bar No. 114823)
DONALD H. CRAM (State Bar No. 160004)
ANDREW S. ELLIOTT (State Bar No. 254757)
ase@severson.com
SEVERSON & WERSON
A Professional Corporation
One Embarcadero Center, Suite 2600
San Francisco, California 94111
Telephone: (415) 398-3344
Facsimile: (415) 956-0439

Attorneys for Defendants
ALLY FINANCIAL INC. and KEVIN WRATE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA — SAN FRANCISCO DIVISION

GROTH-HILL LAND COMPANY, LLC, a California limited liability company; ROBIN HILL, an individual a/k/a Robin Groth a/k/a Robin Groth-Hill; JOSEPH HILL, an individual; and CROWN CHEVROLET, a California corporation,

Plaintiffs,

vs.

GENERAL MOTORS, LLC, a Delaware limited liability company; ALLY FINANCIAL INC., a Delaware corporation as the successor-in-interest to GMAC Inc., GMAC Financial Services LLC, GMAC LLC and General Motors Acceptance Corporation; RANDY PARKER, an individual; JAMES GENTRY, an individual; KEVIN WRATE, an individual; INDER DOSANJH, an individual; CALIFORNIA AUTOMOTIVE RETAILING GROUP, INC., a Delaware Corporation; and DOES 1 through 25, inclusive,

Defendants.

Case No. C-13-01362 TEH

REPLY IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED COMPLAINT BY ALLY FINANCIAL INC. AND KEVIN WRATE

Date:	May 20, 2013
Time:	10:00 a.m.
Courtroom:	2, 17th Floor 450 Golden Gate Avenue San Francisco, CA 94102
Judge:	Hon. Thelton E. Henderson
Action Removed:	March 26, 2013

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Ally Financial Inc. ("Ally") and Kevin Wrate ("Wrate") (collectively the "Ally Defendants") submit this reply in support of their motion to dismiss Plaintiffs' First Amended Complaint ("FAC") as it fails to state a claim upon which relief may be granted, respectfully showing the Court as follows:

I. INTRODUCTION

The opposition to the motions to dismiss[1] filed by Groth-Hill Land Company, LLC, Robin Hill, Joseph Hill (collectively, the "Groth Plaintiffs") and Crown Chevrolet does little to explain how they are able to move forward with legally defective claims.

The claims of Crown Chevrolet are time barred. It waited nearly four-and-a-half years to file a complaint despite knowing that it had been injured, by who, and under what circumstances. Given what Crown Chevrolet alleges it knew, its tolling arguments are meritless.

The Groth Plaintiffs' claims are purely derivative of those of Groth Bros. Chevrolet ("GBC"), the auto dealership that is currently in bankruptcy under Chapter 7 of the Bankruptcy Code. But even if the Groth Plaintiffs had standing to assert GBC's claims, the Groth Plaintiffs released them no less than seven times over the course of a two year period in various forbearance and workout agreements. In an attempt to side-step these numerous releases, the Groth Plaintiffs seek equitable relief, declaring them "void." These equitable arguments fail because GBC was admittedly in default under its lending agreements with Ally, and the seven releases were given by the Groth Plaintiffs in exchange for time and accommodations to cure GBC's defaults and to pursue alternative lenders. GBC and the Groth Plaintiffs clearly benefited from the forbearance/workout agreements, and as such, they have waived these claims and are equitably estopped from pursuing them against the Ally Defendants.

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[1] In addition to the Ally Defendants' motion, General Motors LLC (including individuals, Randy Parker and James Gentry) and California Automotive Retailing Group (including Inder Dosanjh) also filed motions to dismiss in which the Ally Defendants join.

II. CROWN CHEVROLET'S CLAIMS

A. Crown Chevrolet Has Not Adequately Alleged a Tolling Defense

Crown Chevrolet admits that the events giving rise to its claims all occurred outside of the applicable statute of limitations. However, Crown Chevrolet argues that it should be excused for waiting nearly four-and-a-half years to bring its claims under either equitable tolling or equitable estoppel grounds.[2] Neither excuse has merit.

1. Equitable Tolling

Equitable tolling applies in situations where, "despite all due diligence, the party invoking equitable tolling is unable to obtain vital information bearing on the existence of the claim." *Socop–Gonzalez v. I.N.S.*, 272 F.3d 1176, 1193 (9th Cir. 2001) (internal quotation marks and alterations omitted). The party invoking tolling must show that his or her ignorance of the limitations period was caused by circumstances beyond the party's control. *Id*. at p. 1193 (citations omitted).

The gist of each of Crown Chevrolet's claims is that Ally and GM conspired to exert extreme financial pressure and force Crown Chevrolet to sell its dealership franchises to Dosanjh. Crown Chevrolet alleges that in 2008 it had "no reason to believe that [it] needed to investigate" potential claims. Opp. at p. 11. It seeks to toll the limitation period through late 2012 when its owner became aware of the Groth Plaintiffs' lawsuit. In its opposition Crown Chevrolet implies that once it learned of GBC's fate, it finally obtained the previously missing "vital information" on which to base its claims. This assertion is implausible and should be rejected by the Court.

According to its complaint, Crown Chevrolet ***knew*** that Ally was exerting substantial economic pressure, it ***knew*** that Ally was threatening to terminate the financing agreement, it ***knew*** that Ally was demanding curtailments payments even though Ally had access to sufficient funds in a cash collateral account, and it ***knew*** that Ally was demanding sales proceeds that did not exist. See e.g., FAC, ¶79.

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[2] Plaintiffs appear to conflate equitable tolling and equitable estoppel. See Opp. at p. 14. Tolling "focuses on the plaintiff's excusable ignorance of the limitations period and on lack of prejudice to the defendant," while estoppel "focuses on the actions of the defendant." *Naton v. Bank of California*, 649 F.2d 691, 696 (9th Cir.1981).

During the same time, Crown Chevrolet ***knew*** Old GM was telling it to sell its franchises, it ***knew*** Old GM would accept a sale only to Dosanjh, it ***knew*** that Old GM rejected out-of-hand a sale to a well-qualified and established dealer, it ***knew*** that Old GM guaranteed that Dosanjh had sufficient funds, and it ***knew*** that Old GM required the sale to be structured in an unorthodox way. See *e.g.*, FAC, ¶80.

Ally and GM's actions ultimately resulted in Crown Chevrolet's injury, *i.e.*, being "forced to sell its Cadillac and Chevy franchises to Dosanjh and/or CARG at less than fair market value." Opp. at p. 11.

Crown Chevrolet's argument that it could not have discovered its injury until and unless it learned of the alleged conspiracy is illogical. It sold its franchise rights for less than what it knew to be fair market value at the alleged direction of Old GM and only after Ally allegedly exerted extreme financial pressure and threatened to terminate its floorplan financing agreement. By October, 2008, Crown Chevrolet plainly had knowledge of "vital information" sufficient to determine that it had been injured, by who, and under what circumstances. Accordingly, it is not entitled to the benefit of equitable tolling.

2. Equitable Estoppel

In order to toll the limitations period under a fraudulent concealment theory, a plaintiff carries the burden of proving that (1) the defendant "affirmatively misled" him as to the *operative facts* that gave rise to his claim, and (2) plaintiff "had neither actual nor constructive knowledge" of these operative facts despite his diligence in trying to uncover them. *Thorman v. Am. Seafoods Co.*, 421 F.3d 1090, 1094 (9th Cir. 2005); *Volk v. D.A. Davidson & Co.*, 816 F.2d 1406, 1415 (9th Cir. 1987). As shown in its opposition, Crown Chevrolet can do neither.

The "operative facts" that give rise to Crown Chevrolet's claims—or at least the facts which would, under the circumstances, lead Crown Chevrolet to investigate whether it had a claim—are alleged to have been known to Crown Chevrolet by October, 2008. Crown Chevrolet was clearly aware of the financial pressure imposed by Ally as well as the constant threats of termination of financing. It knew Ally's curtailment demands were overreaching given its access to the cash collateral account. And it knew Ally's demand that Crown Chevrolet turn over $1,750,000 from the franchise sale far exceeded the actual amount of sales proceeds. Crown Chevrolet was also aware of the alleged bad acts taken by Old GM during the same time period. According to its complaint and opposition, Crown Chevrolet knew that Old GM required Crown Chevrolet to sell to Dosanjh, explicitly rejected a sale to another well-financed and established dealer, and compelled Crown Chevrolet to structure the sale in an unorthodox way—all of which resulted in a sale for less than Crown Chevrolet knew to be market value.

Rather than showing that Ally affirmatively concealed these operative facts, Crown Chevrolet's allegations show that it knew by October 2008 that it had been injured, by who, and under what circumstances. Accordingly, Crown Chevrolet cannot claim it had "neither actual nor constructive knowledge" of the operative facts. *Hexcel Corp. v. Ineos Polymers, Inc*., 681 F.3d 1055, 1060 (9th Cir. 2012) (citations omitted) (The plaintiff is deemed to have had constructive knowledge if it had enough information to warrant an investigation which, if reasonably diligent, would have led to the discovery of the fraud.).

3. Crown Chevrolet's Tolling Arguments Are Subject to a Motion to Dismiss

Ally acknowledges that "[b]ecause the applicability of the equitable tolling doctrine often depends on matters outside the pleadings, it is not generally amenable to resolution on a Rule 12(b)(6) motion." *Supermail Cargo, Inc. v. United States*, 68 F.3d 1204, 1206 (9th Cir. 1995) (citations omitted). When, however, a plaintiff does not allege any facts demonstrating that he or she could not have discovered the alleged violations by exercising due diligence, dismissal may be appropriate.   See *Ervin v. County of Los Angeles*, 848 F.2d 1018, 1020 (9th Cir.1988) (year and a half wait to file second claim unreasonable and not in good faith) (Cert. denied).

Here, Crown Chevrolet's own allegations defeat its claims for equitable tolling and equitable estoppel. Crown Chevrolet alleges it was fully aware of the "material facts" giving rise to its claim by October, 2008. FAC, ¶¶79, 80. It knew when it was injured, by whom, and under what circumstances. As alleged, it is implausible for Crown Chevrolet to argue to the contrary.

B. Crown Chevrolet's Fraudulent Concealment Claim Fails Because There Is No Duty to Disclose an Intent to Commit Intentional Torts

Crown Chevrolet bases its fraudulent concealment claim on the theory that Ally actively concealed a number of "material facts" supposedly within Ally's exclusive knowledge. As authority for this point, Crown Chevrolet cites *LiMandri v. Judkins*, 52 Cal. App. 4th 326, 336 (1997) for the unremarkable position that there are "four circumstances in which nondisclosure or concealment may constitute actionable fraud: (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations but also suppresses some material facts."

Crown Chevrolet conveniently ignores the rest of the *LiMandri* opinion which applies the foregoing circumstances to situations where, like here, the plaintiff alleges the defendant concealed its intent to commit fraud:

> LiMandri's nondisclosure causes of action are further problematic in that they essentially seek to hold Judkins liable for failing to disclose his intention to wrongfully assert the superiority of Security's lien rights. Since Judkins's wrongful assertion of superior lien rights on behalf of Security is the basis for LiMandri's cause of action for intentional interference with prospective economic advantage, LiMandri's theory, in essence, is that Judkins owed him a duty to disclose his intention to commit an intentional tort. ***Although "inferentially, everyone has a duty to refrain from committing intentionally tortious conduct against another*** " (*Cicone v. URS Corp.* (1986) 183 Cal.App.3d 194, 201, 227 Cal.Rptr. 887), ***it does not follow that one who intends to commit a tort owes a duty to disclose that intention to his or her intended victim***. The general duty is not to warn of the intent to commit wrongful acts, but to refrain from committing them. We are aware of no authority supporting the imposition of additional liability on an intentional tortfeasor for failing to disclose his or her tortious intent before committing a tort.

LiMandri, 52 Cal.App.4th at 338 (emphasis added).

Here, Crown Chevrolet alleges that Ally actively concealed four "material facts": (1) the defendants illegally conspired to funnel business to Dosanjh and CARG, (2) Ally intended to force Crown Chevrolet out of business through illegal means, (3) Ally's payment demands were for an unlawful purpose, and (4) Ally's illicit conduct was intended to put Crown Chevrolet out of business. Opp. at p. 7. But each of these so-called "material facts" represents an intentional tort. Thus, as both *LiMandri* and *Bank of Am. Corp. v. Superior Ct*., 198 Cal.App.4th 862, 873 (2011) hold, Crown Chevrolet cannot impose liability on Ally for *concealing* the supposed "material facts".

III. GROTH PLAINTIFFS' CLAIMS

A. Dealership Default Precludes Argument That Forbearance/Workout Agreements Are Void

The crux of the Groth Plaintiffs' argument is that seven forbearance and/or workout agreements entered into by GBC over a two year period (between November, 2008 and November, 2010) wherein GBC and the Groth Plaintiffs, as guarantors, released the Ally Defendants, should be set aside as void as they: 1) were entered into under economic duress; 2) were a product of fraudulent inducement; and 3) were a result of undue influence. Even assuming the Groth Plaintiffs have standing to set aside these agreements (which they do not),[3] they cannot circumvent the fact that GBC was in default under its wholesale financing agreement with Ally at the time these forbearance/workout agreements were entered into.[4] FAC ¶¶ 47, 48, 53, 56, 59, 63 and 64. As *Price v. Wells Fargo Bank,* 213 Cal.App.3d 465 (1989) holds, the Ally Defendants owed GBC or the Groth Plaintiffs no duty of moderation in the enforcement of its legal rights. *Id*. at 479 (overruled on other grounds in *Riverisland Cold Storage, Inc. v. Fresno–Madera Production Credit Association*, 55 Cal.4th 1169, 1182 (2013)).

It does not constitute duress or coercion to threaten to do that which a party has a legal right to do – in this case terminate floorplan financing due to GBC's default. *Marshall v.*

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[3] The Ally Defendants join the GM Defendants' motion to dismiss Groth Plaintiffs' claims based upon their lack of standing. As aptly argued in the GM Defendants' motion to dismiss, reply memorandum and supporting documents, these claims either belong to GBC and its bankruptcy estate or derive from the injury to GBC for which they have a claim that may be asserted in GBC's bankruptcy.

[4] GBC had sold a substantial number of vehicles without repaying Ally the amounts it advanced for GBC to acquire these vehicles, a default known in the industry as "sold out of trust" or "SOT."

Packard-Bell Co., 106 Cal.App.2d 770, 774 (1951). There is no allegation of a "wrongful" act taken on the part of the Ally Defendants in connection with these agreements.[5] The "economic duress" defense requires the pleader to allege facts that, if true, show that the party claiming duress had no reasonable alternative to the agreement. The Groth Plaintiffs admit they "were under no obligation to comply with [Ally's] demand." Opposition p. 17, lns. 15-16. As such, the Groth Plaintiffs cannot now claim the seven forbearance/workout agreements entered into over a course of two years are now void based upon some economic duress, fraudulent inducement or undue influence[6] exerted by Ally upon the Groth Plaintiffs.

Further, as in *Price*, the Groth Plaintiffs do not deny that GBC was in default and never disputed that the amounts claimed by Ally were in fact owed to it. *Id*. at pp. 472, 480–481. And the alleged promise to "stop harassing GBC" and "not to terminate the dealership's floorplan" was not asserted as a basis for the five workout agreements dated May 18, 2010, August 2, 2010, August 19, 2010, September 30, 2010 and November 1, 2010. FAC ¶¶ 64, 209, Exs. I, J, K, L and M; *Price*, 213 Cal.App.3d at pp. 480–481. These workout agreements were entered into after Ally sued GBC for breach of contract and for replevin of its collateral.

The fraudulent inducement claim also fails as to the forbearance agreements dated November 4, 2008 (FAC, Ex. E) and February 13, 2009 (*Id*., Ex. F) because the tortious acts that supposedly breached the false promises are directly addressed and countenanced in the forbearance agreements.[7] In short, GBC's actions and the Groth Plaintiffs' allegations undermine any claim of reliance on the alleged promises. *Jolley v. Chase Home Fin., LLC*, 213 Cal. App. 4th 872, 894 (2013). As such, these forbearance and workout agreements are not void, but in fact are valid and effective.

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[5] *Rich & Whillock, Inc. v. Ashton Dev., Inc.*, 157 Cal.App.3d 1154, 1158-59 (1984) (Economic duress requires a "wrongful" act)

[6] Further, to state a claim for rescission based on undue influence, a plaintiff must allege that the party against whom rescission is sought took some advantage of the mental weakness or incapacity of the other party. *Das v. Bank of Am., N.A.*, 186 Cal.App.4th 727, 743 (2010). The Groth Plaintiffs do not allege mental weakness or legal incapacity.

[7] Ally's actions of: 1) conducting a financial audit of GBC in December 2009; 2) conducting inventory audits of GBC in January 2010; and 3) imposing curtailment charges on GBC in April 2010 (FAC, ¶142) were all authorized under the terms of the forbearance agreements.

B. The Groth Plaintiffs' Claims Have Been Released

Under the terms of the seven forbearance/workout agreements entered into by GBC over the course of a two year period between November, 2008 and November, 2010, the Groth Plaintiffs agreed to release the Ally Defendants from all claims of every kind and nature, whether known or unknown, arising out of or in any way relating to the lending agreements or the credit relationships with Ally. FAC, ¶¶52, 55, 64, 208, 209, Exs. E, F, I, J, K, L and M. On April 19, 2010, Ally filed a complaint against GBS "because of the defaults by the Dealership under its wholesale lending agreements with [Ally]." (FAC, Ex. I.) The Groth Plaintiffs' claims arose out of alleged misrepresentations made by Ally in October, 2008 and prior to June, 2009 – prior to filing of the complaint. (FAC, ¶¶133, 135.) The five workout agreements were entered into after the filing of the complaint.[8] Even if the alleged misrepresentations were made, the Groth Plaintiffs knew that they were false in December, 2009 (when Ally attempted to conduct a financial audit), January, 2010 (when Ally conducted inventory audits), and in April, 2010 (when Ally imposed curtailment charges). (Id., ¶142.) Further, any concealment or hidden intent was revealed on April 19, 2010 when Ally filed a complaint for breach of contract and applied for a writ of possession to repossess the vehicle collateral. The Groth Plaintiffs knowingly released their claims based upon any alleged misrepresentation or concealment when they executed the workout agreements dated May 18, 2010, August 2, 2010, August 19, 2010, September 30, 2010 and November 1, 2010.

C. The Groth Plaintiffs Waived Its Claims and Are Estopped from Asserting Them

As set forth above, the Groth Plaintiffs knew of Ally's alleged fraudulent conduct and nefarious intentions by the time Ally filed a complaint against GBC for breach of contract and applied for a writ of possession to repossess the vehicle collateral. Yet GBC and the Groth Plaintiffs chose to enter into five workout agreements over a seven month period thereafter. This conduct is completely at odds with any intention to sue for fraud. Further, GBC and the Groth Plaintiffs gained substantial benefits from these agreements – namely, time and accommodations to cure GBC's default and pursue alternative lenders. Consequently, the Groth Plaintiffs have waived their claims and are equitably estopped from pursuing these claims against the Ally Defendant. *Oakland Raiders v. Oakland-Alameda Cnty. Coliseum, Inc.*, 144 Cal.App.4th 1175, 1185 - 1189 (2006).

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[8] The five workout agreements are dated May 18, 2010, August 2, 2010, August 19, 2010, September 30, 2010 and November 1, 2010 respectively. FAC ¶¶ 64, 209, Exs. I, J, K, L and M

D. Emotional Distress Claim Should Be Dismissed

Robin Hill's claim for intentional infliction of emotional distress fails as a matter of law because it has been released and because the alleged bad acts—assuming they are true—are not outrageous. Moreover, the actions were not directed toward Robin Hill personally. Finally, Ms. Hill's claim is barred by the statute of limitations.

1. Ms. Hill's Claim Fails Has Been Released and Moreover Does Not Rise to the Level of Outrageousness Required to Sustain Such a Claim

Robin Hill's claim for intentional infliction of emotional distress should be dismissed as the claim has been released and the conduct the Ally Defendants allegedly engaged in is not sufficiently outrageous to support the claim. Robin Hill, president of GBC, identifies seven specific instances of alleged outrageous conduct by Ally and/or Wrate: 1) conspiring to shut down GBC; 2) conspiring to defraud Robin Hill out of real property; 3) telling Robin Hill that Ally would not terminate GBC's floorplan and would stop harassing GBC when they had no intention of doing so; 4) implementing undue financial pressure on GBC in late 2009 and early 2010; 5) engaging in conversations with Inder Dosanjh about how Ally was going to apply financial pressure upon GBC and put GBC out of business; 6) sending a letter to Robin Hill's parents; and 7) telling Robin Hill that Ally would keep the floorplan in place through December 31, 2010 and then later informer her that it was being terminated in mid-December, 2010. FAC, ¶188.

Whether conduct constitutes "outrageous conduct" is normally an issue of fact, but a court may nonetheless make an initial determination of whether defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery on a motion to dismiss. *Trerice v. Blue Cross of Cal.*, 209 Cal.App.3d 878, 883 (1989); *Arikat v. JP Morgan Chase & Co.*, 430 F.

Supp. 2d 1013, 1027 (N.D. Cal. 2006). First, Robin Hill's claim has been released under the terms of the seven forbearance and workout agreements entered into by GBC and Robin Hill over a two year period (between November, 2008 and November, 2010). FAC, ¶¶52, 55, 64, 208, 209, Exs. E, F, I, J, K, L and M. Second, the instances referenced above do not rise to the level of outrageous conduct as a matter of law.[9] Third, none of these instances of allegedly outrageous conduct were made directly to Robin Hill.[10]

As set forth at length above, the actions taken by the Ally Defendants were consistent with exercising its remedies upon GBC's defaults and attempting to work through those defaults. This conduct was not so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Further, this conduct was not directed toward Robin Hill personally.

2. Ms. Hill's Claim Is Barred by the Statute of Limitation

The applicable statute of limitations is one year, not two. *Raynal v. Nat'l Audubon Soc., Inc.*, 2012 WL 5878386, *13 (N.D. Cal. 2012) (citing *Maynard v. City of San Jose*, 37 F.3d 1396, 1406 (9th Cir.1999); Code Civ. Proc. §340. Nonetheless, even if the limitation period is two years, Ms. Hills claims are still barred. Robin Hill identifies seven specific instances of alleged outrageous conduct by Ally and/or Wrate. FAC, ¶188. The first six alleged acts all occurred on or before April 15, 2010, which is more than two years before Ms. Hill filed the initial complaint on October 25, 2012.

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[9] Rest.2d Torts, § 46, com. d ("It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by "malice," or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!").

[10] The defendant's outrageous conduct must also be directed at the plaintiff or occur in the presence of the plaintiff of whom defendant is aware. See *Sabow v. United States*, 93 F.3d 1445, 1454 (9th Cir.1996) (citing *Christensen v. Superior Court*, 54 Cal.3d 868, 903, 2 Cal.Rptr.2d 79, 820 P.2d 181 (1991)); see also *Smith v. Pust*, 19 Cal.App.4th 263, 274, 23 Cal.Rptr.2d 364 (1993) (defendant's conduct was "accidental" and was in no way "directed" at plaintiff) (citing *Christensen*, 54 Cal.3d at 903, 2 Cal.Rptr.2d 79, 820 P.2d 181); *Kruse v. Bank of America*, 202 Cal.App.3d 38, 67–68 & n. 21, 248 Cal.Rptr. 217 (1988) ("heartless and insensitive remarks" not directly communicated to plaintiff "merit opprobrium [but] do not qualify as the kind of 'outrageous' conduct necessary to support an action for intentional infliction of emotional distress").

The seventh outrageous act—that although Ally supposedly agreed during the workout period to allow GBC until December 31, 2010 to obtain an alternative lender, it nonetheless informed Ms. Hill in "mid-December [that] it was shutting down its floorplan early"—is directly at odds with the November 2010 Workout Agreement. Compare FAC, ¶69 with FAC, Ex. J. Under the November 2010 Workout Agreement, Ally agreed to extend GBC's termination date to December 1, 2010. Further, the parties agreed that it would be the *last extension*. FAC, Ex. J at §2 ("Ally and the Dealership agree that December 1, 2010 is the last and final date for payment of the Dealership's obligation owed to Ally.") The recitations of fact contained in the November 2010 Workout Agreement, made at the time of the events, are conclusive and Ms. Hill is estopped to argue otherwise. *Darling Int'l, Inc. v. Baywood Partners, Inc*., 2007 WL 2904034, *6 (N.D. Cal. 2007); see also *Woods v. Google, Inc*., 889 F.Supp.2d 1182, 1192 (N.D. Cal. 2012) (citing *In re Gilead Scis. Sec. Litig*., 536 F.3d 1049, 1055 (9th Cir.2008) (the Court need not accept as true allegations that contradict matters that are either subject to judicial notice or attached as exhibits to the complaint.).

IV. CONCLUSION

For the several reasons stated above, Ally respectfully requests that its motion to dismiss be granted.

DATED: May 6, 2013

SEVERSON & WERSON
A Professional Corporation

By: /s/ *Andrew S. Elliott*
Andrew S. Elliott

Attorneys for Defendants
ALLY FINANCIAL INC. and KEVIN WRATE